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**IN THE
COURT OF APPEALS OF INDIANA**

EARNEST WEBB,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A03-0711-CR-504

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jerome Frese, Judge
Cause No. 71D03-0008-CF-380

April 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Earnest Webb appeals his consecutive sentences for Class B felony criminal confinement and Class D felony intimidation, which the trial court also ordered to be served consecutive to a sentence he was currently serving in Mississippi. Specifically, Webb contends that consecutive sentences are improper because the trial court failed to identify any aggravators and failed to balance any aggravators and mitigators. Because the trial court properly identified aggravators and mitigators, related the specific reasons that the court found those aggravators and mitigators, and demonstrated that it balanced the aggravators with the mitigators and because the court properly explained why it was ordering consecutive sentences, we affirm Webb's consecutive sentences.

Facts and Procedural History

Webb was a drug dealer in South Bend. On April 18, 2000, Webb encountered one of his customers, Jeff Kopetski, who owed him money for an earlier purchase of crack cocaine.¹ Webb and three other suspects seized Jeff and forced him inside a van and kept him there while Webb and his accomplices drove around town trying to make contact with Jeff's father, Frank. The suspects finally reached Frank on the phone, and Jeff asked his father for \$500. Frank said no, so Webb took the phone and told Frank to bring the money or Webb would kill Jeff. Frank contacted the police, and Jeff was able to escape. Jeff was beaten, bound, and doused with kerosene during this ordeal.

On August 16, 2000, the State charged Webb with Count I: Class A felony kidnapping (Jeff), Count II: Class B felony criminal confinement (Jeff), Count III: Class

¹ Because Webb does not include the transcript from the guilty plea hearing, where the State presented the factual basis for the offenses to which he pled guilty, we rely on the PSI, which contains the probable cause affidavit, for our facts.

C felony battery (Jeff), and Count IV: Class D felony intimidation (Frank). Webb was located in Mississippi, where he was serving a sentence for unrelated charges. In 2006, Webb was brought to Indiana to answer these charges.

On June 6, 2007, Webb pled guilty to Class B felony criminal confinement and Class D felony intimidation, and the State dismissed the other two charges. At the July 19, 2007, sentencing hearing, although the trial court did not specifically mention the words “aggravators” or “mitigators,” the court noted that the crime was “horrendous,” “egregious,” “ongoing,” and “an outrageous day of terror.” Tr. p. 22, 25. The trial court also noted the “very impressive” rehabilitation that had been occurring since Webb was incarcerated in Mississippi. *Id.* at 26. In order to balance Webb’s rehabilitation with the horrendous nature of the crime, *see id.* at 27-28, the trial court sentenced Webb to the presumptive² term of ten years for Class B felony criminal confinement and the maximum term of three years for Class D felony intimidation. Because there were two victims, Jeff and his father Frank, the court ordered these sentences to be served consecutively, for an aggregate term of thirteen years. *Id.* at 27. Explaining the difficult situation it was in because Webb was currently serving a sentence in Mississippi with a release date of January 31, 2015, the trial court ordered the sentence in this case to be served consecutive to the sentence in Mississippi. The court explained that running this sentence concurrent to the Mississippi sentence would result in hardly any jail time for this crime, which was not an acceptable outcome given the “horrendous” and “egregious” nature of this crime. *Id.* at 23-27. Webb now appeals his sentence.

² Although Webb was sentenced in 2007, these crimes occurred in 2000. Accordingly, we apply the sentencing statutes in effect at the time the crimes were committed.

Discussion and Decision

Webb raises one issue on appeal. Specifically, he contends that consecutive sentences are improper because the trial court failed to identify any aggravators and failed to balance any aggravators and mitigators.

In order for a trial court to impose enhanced or consecutive sentences, it must (1) identify the significant aggravating factors and mitigating factors; (2) relate the specific facts and reasons that the court found those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. *Veal v. State*, 784 N.E.2d 490, 494 (Ind. 2003). In addition, “[t]he imposition of consecutive sentences is a separate and discrete decision from sentence enhancement, although both may be dependent upon the same aggravating circumstances.” *Mathews v. State*, 849 N.E.2d 578, 589 (Ind. 2006) (quoting *Ajabu v. State*, 722 N.E.2d 339, 343 (Ind. 2000), *reh’g denied*). “As with sentence enhancement, even a single aggravating circumstance may support the imposition of consecutive sentences.” *Id.* (quoting *Sanquenetti v. State*, 727 N.E.2d 437, 442 (Ind. 2000)).

Webb first argues that “[a]t no point at the sentencing did the court specifically explain his reason why a sentencing on the criminal confinement conviction and intimidation conviction were consecutive to each other.” Appellant’s Br. p. 11. To the contrary, the trial court clearly stated:

So I’m going to make the sentence consecutive but I’m not going to max it out. I am going to make the two counts consecutive because I think there are two victims, the victim himself and his father. His father was victimized when he was told his son would be killed if he didn’t come up with money. So that’s going to be a consecutive count, no doubt about it.

Tr. p. 27. Thus, the trial court properly relied on the presence of two victims to justify running Webb's criminal confinement and intimidation sentences consecutively. *See Townsend v. State*, 860 N.E.2d 1268, 1273 (Ind. Ct. App. 2007) (noting that the presence of multiple victims is an aggravating circumstance that can justify consecutive sentences), *trans. denied*.

Webb next argues that a "review of the sentencing transcript indicates that the court made no explanation as to why it was making the Mississippi convictions consecutive to the Indiana convictions." Appellant's Br. p. 12. Our review of the record, however, reveals that the trial court carefully explained its reasons for doing so. Specifically, the court noted that the State requested a twenty-three-year sentence in this case and asked that it be served consecutive to Webb's sentence in Mississippi. In contrast, Webb's attorney asked for concurrent sentences in this case, to be served concurrently to Webb's sentence in Mississippi. After analyzing these options, the trial court explained that following the State's recommendation would ignore "some of the very, very impressive rehabilitation" that had been occurring in Mississippi. Tr. p. 26. The court also explained that following Webb's attorney's recommendation would mean that Webb would "only have like two and a half years or something three years, something like that to have to do. That is not – that's not appropriate." *Id.* Noting its struggle to come up with a sentence that would "fairly recognize the horrendous effect" of this crime, *id.* at 28, the trial court sentenced Webb to the presumptive term of ten years for criminal confinement and the maximum term of three years for intimidation and then ordered the sentence in this case to run consecutive to the sentence in Mississippi:

Ten and three is thirteen. Day for day credit means six and a half. So when you get out of Mississippi you have six and a half years to do real time. And if you continue getting education and doing counseling and other things, you can get additional time cuts here. So your six and a half that you're looking at here of real time could be further reduced. I think I am being – I am certainly recognizing your rehabilitation down in Mississippi. . . . And but for that I am telling you you were looking at twenty-three years starting when you finished Mississippi. . . . What you did was outrageous.

Id. at 28-29 (formatting altered).

Taking the trial court's sentencing statement as a whole, it is apparent that the trial court identified aggravators and mitigators, related the specific reasons that the court found those aggravators and mitigators, and demonstrated that it balanced the aggravators with the mitigators. In addition, the court thoroughly explained why it was ordering consecutive sentences. Accordingly, we affirm Webb's consecutive sentences.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.